

ZONING BOARD OF ADJUSTMENT

DRAFT - Minutes of May 17, 2011

ATTENDEES: Doug Kirkwood – Chairman, Carl Miller, Robert Rowe, Wil Sullivan, Alternate, Jim Quinn, Alternate, Jamie Ramsay, Beth Davis, Alternate, and Charlie Tiedemann - Planning Director

The meeting was called to order at 7:05 p.m. Chairman Doug Kirkwood explained the Zoning process and introduced Board members. Doug Kirkwood asked that Beth Davis vote in the absence of Joe Taggart.

Case 1458: Lot 2-127-1 Stearns and Boston Post Roads: *Variance* – William L. Paxton, 64 Stearns Road, Amherst, NH 03031 (owner), requests a Variance from the provisions of the Amherst Zoning Ordinance Art. IV, Sec. 4.12 Watershed Protection District, Para. 4.12.1.2 Regulations. In order that he may construct an addition to his existing dwelling that will be 89 feet +/- from the edge of a fire pond (100 feet required). Residential / Rural Zone (Watershed Protection District, Flood Plain Conservation District, and Aquifer Conservation District overlays)

Attorney Greg Michael, representing the applicant, indicated he is pleased to see so many board members present this evening. Attorney Michael explained the Paxton property and referenced the fire protection pond and its reference to Mr. Paxton's home. Building elevations were provided to the members. 100 feet is the required setback from the fire pond.

Attorney Michael explained this plan is not contrary to public interest. Setbacks from the fire pond (which is artificial) cannot be achieved. There is no threat to health safety or welfare and it does not alter the existing neighborhood. Spirit of the Ordinance is observed. This addition is a 16 x 16 foot attachment to the house. The Ordinance does allow other things in this same area which would create a greater impact to the neighborhood. Substantial justice – the style, location and layout is good to attach the proposed addition. There is no gain to the public in denying this application. This is the setback for the artificial fire pond, it is not a natural wetland. This will still be a single family residence. This will not encroach on any neighbor setbacks. Hardship, this parcel has a fire pond within its property which makes it difficult for the owner to meet the zoning requirements. The closest structure will be 89 feet away, 100 feet is required. This is a reasonable use and many people build additions to their homes. Tom Carr, CWS, from Meridian Land Services, was notified and has indicated there are 89 feet of heavy density (woods) between the proposed addition and the fire pond and notes this has no environmental impact to the surrounding area. The five criteria are met and the elevations are in the Board's packets.

Doug Kirkwood asked if all this land is above the 100 year flood plain. Attorney Michael said yes, it is permeable soils as well. Beth Davis asked about the fire pond, why was it built? Mr. Paxton bought the property 18 months ago and the fire pond was

there at the time but the Fire Chief explained to him that the fire pond is used to refill the fire equipment but has not been used in many years. Wil Sullivan asked if there is an easement. Attorney Michael did not do the title search therefore he is unaware. Robert Rowe asked if there is a letter from the Engineer (Tom Carr) in the packet. Attorney Michael provided that letter. Beth Davis is interested in how the fire pond is used, and whether or not this requirement would apply, since it is being treated as though it is a natural watershed. Does the relief being requested have any negative affect on the pond? It sounds as though the pond is not used that much by the Fire Department. Jamie Ramsay asked if there are fire hydrants are on Stearns Road. Charlie Tiedemann responded that Pennichuck has installed hydrants on Stearns Road and the Fire Department would prefer to get water from Pennichuck rather than the fire pond. Charlie Tiedemann also stated that the fire pond has been there since he's been in town and it is treated as a watershed. Carl Miller said there is a hydrant right next to the pond. Mr. Paxton noted there is, and it is used to draw the water in. Carl Miller said he cannot imagine the Fire Department taking water from a pond if there are hydrants they can use.

Jim Quinn suggested the application should be signed by the applicant Mr. Paxton. Attorney Michael indicated that it has been signed on Charlie Tiedemann's copy. Jim Quinn asked about the original plan and the additions to the plan. Charlie Tiedemann explained that is to show what was there that is within the requirements and what the proposed new addition is.

Carl Miller moved to enter deliberations. Beth Davis seconded. All were in favor.

DELIBERATIONS:

Case 1458:

Carl Miller moved no regional impact. Beth Davis seconded. All were in favor. .

II. Conclusions [RSA 674:33, I (b)]:

1. The Variance will not be contrary to the public interest.

Carl Miller-yes, Jamie Ramsay-yes, Beth Davis-yes, Robert Rowe-yes, Doug Kirkwood-yes.

True: 5, Not True: 0

2. The Variance is consistent with the spirit and intent of the Ordinance.

Robert Rowe-yes, this will not cause any issues; Beth Davis-yes, Jamie Ramsay-yes, Carl Miller-yes, Doug Kirkwood-yes

True: 5, Not True: 0

3. Substantial justice is done.

Jamie Ramsay-yes, Carl Miller-yes, Robert Rowe-yes putting an addition on the side would be problematic; Beth Davis-yes, Doug Kirkwood-yes

True: 5, Not True: 0

93
94 4. The values of surrounding properties will not be diminished.

95 Beth Davis-yes, the scope of addition and the value to the property will maintain property
96 values; Carl Miller-yes; Robert Rowe-yes, Jamie Ramsay-yes, Doug Kirkwood-yes

97 True: 5, Not True: 0
98

99 5. Literal enforcement of the provisions of the Ordinance would result in an
100 unnecessary hardship.

101 (Apply tests under A or B below)
102

103 A. For purposes of this subparagraph, "unnecessary hardship" means that, owing
104 to special conditions of the property that distinguish it from other properties in the area:
105

106 (1) No fair and substantial relationship exists between the general public
107 purposes of the Ordinance provision and the specific application of that provision to the
108 property; and
109

110 (2) The proposed use is a reasonable one.
111 Jamie Ramsay-yes, general purpose of the ordinance is health and safety of the general
112 public; Carl Miller-yes this pond is not something necessary and is probably more of a
113 mud hole; Robert Rowe-yes, Beth Davis-yes, Doug Kirkwood-yes

114 True: 5. Not True: 0
115

116 B. If the criteria in subparagraph A are not established, an unnecessary hardship
117 will be deemed to exist if, and only if, owing to special conditions of the property that
118 distinguish it from other properties in the area, the property cannot be reasonably used in
119 strict conformance with the Ordinance, and a Variance is therefore necessary to enable a
120 reasonable use of it. True: ____, Not True: ____
121

122 The application passed all tests, therefore the Chairman declared the application is
123 approved.
124

125 *Jamie Ramsay moved to come out of deliberations at 7:28 p.m. Beth Davis seconded.*
126 *All were in favor.*
127

128 **Minutes:** Minutes of November 16, 2010, and March 15, 2011
129

130 November 16, 2010

131 Charlie Tiedemann previously sent copies of the minutes to everyone.
132

133 *Carl Miller moved to approve as submitted. Jamie Ramsay seconded. All were in favor.*
134

135 March 15, 2011

136 *Jamie Ramsey moved to approve as submitted. Carl Miller seconded.*
137

138 Robert Rowe abstained since he was not in attendance at the meeting.

139
140 *Carl Miller, Jamie Ramsay and Doug Kirkwood were in favor with Jim Quinn, Beth*
141 *Davis, Wil Sullivan and Robert Rowe abstaining. Motion passed.*
142

143
144 **OLD/NEW BUSINESS:**
145

146 Charlie Tiedemann asked if Doug Kirkwood would like to wait on the elections of
147 officers. He is unaware of anyone that is interested in an officer position or joining the
148 ZBA. Doug Kirkwood suggested having the elections in June to see if there may be any
149 new members. Doug Kirkwood asked how the meeting looks for June. Charlie
150 Tiedemann responded that right now there aren't any applications; the deadline (for
151 applications) for that meeting is Monday May 23.
152

153 Charlie Tiedemann will add the election of officers to the next meeting agenda that has
154 applications.
155

156 Charlie Tiedemann said there was a land use bill being put through to change the way
157 condos or condo associations are notified. That change is to notify each owner, not just
158 the association, but it has not passed yet, it would be \$7 per owner. Condo associations
159 do not pay taxes, so the owners are not tracked. There should be a bill that forces the
160 developer to start the association but then get addresses of who will maintain it. Beth
161 Davis indicated they usually have a management company, but if there is no Board, it
162 gets forgotten. Charlie Tiedemann thinks the common land should be taxed and that
163 might get the attention of the association and owners. Beth Davis indicated if they are
164 single building condos, the common area is owned by all of the owners.
165

166 *There being no further business before this Board, Beth Davis moved to adjourn at 7:40*
167 *p.m. Jamie Ramsay seconded. All were in favor.*
168

169 Respectfully submitted,
170

171
172 Darlene J. Bouffard
173 Recording Secretary